IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9438 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI LIMBABHAI KOLI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 10/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this Writ petition under Art.226 of the Constitution of India, challenged the legality and validity of the order of detention dt. 7/7/2000 (Annexure : A) passed by Respondent No.2 in exercise of powers conferred upon him

under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that the petitioner detenu is a "bootlegger" within the meaning of Sec.2(b) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing the order of detention, for arriving at his subjective satisfaction, the detaining authority placed reliance on two Prohibition Cases lodged against the petitioner detenu in Rajkot Taluka Police station which are referred to in the grounds of detention. These two cases are pending with the Investigating Officer for investigation. The detaining authority passed an order of detention on 7/7/2000 and that order has been challenged in this Writ Petition.

3. Though Rule has been served upon each respondent, the respondents have not filed affidavit-in-reply in reply to the Writ Petition controverting the grounds mentioned in Memo thereof.

4. Ms.Subhadraben Patel, the learned advocate for the petitioner has argued that looking to the grounds of detention, while passing order of detention, the detaining authority has stated in the grounds of detention that he has taken into consideration the provisions of Sec. 57(c) of the Bombay Police Act which he could not have taken into consideration as the petitioner has not been convicted in atleast two cases. She has further argued that the detaining authority has taken into consideration less drastic remedy which is not available to him for passing an order of detention, and therefore, this is a case of total non-application of mind of the detaining authority.

5. Ms. Subhadraben Patel has cited an authority in case of JAYANTI NENUMEL RAMNANI VS. COMMISSIONER OF POLICE, RAJKOT, reported in 2000(2) G.L.H. 166, wherein it has been held that the question does not arise for considering less drastic remedy, when it was not available to the detaining authority. He has taken into consideration the provisions of Sec. 57(c) of the Bombay Police Act, which he could not have taken into consideration as the petitioner has not been convicted in atleast two cases. This fact itself shows non-application of mind on the part of the detaining authority. The facts of the present case squarely fall within the four corners of the case cited by Ms. Subhadraben Patel.

6. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 7/7/2000 passed by Respondent No. 2 which is at Annexure: A is quashed and set aside. The petitioner detenu is ordered to be released forth with, if he is not required to be detained further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 10/10/2000. (H.H.MEHTA,J.)
ccshah